

VOLUNTARY CLEANUP CONTRACT
09-5807-NRP
IN THE MATTER OF
Salvation Army Site, Richland County
and
Midlands Housing Alliance

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Midlands Housing Alliance, with respect to the Property located at 2025 Main Street, Columbia, South Carolina. The Property includes approximately 2.165 acres identified by Tax Map Serial Numbers R09015-02-03, R09015-02-07, and R09015-02-08. In entering this Contract, the Department relies on the representations of the "Information and Certification" of March 18, 2009 by Midlands Housing Alliance, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This contract is entered into pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710-760, as amended on June 11, 2008; the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq., and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710-760, as amended on June 11, 2008, and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et. seq., the S.C. Pollution Control Act, S.C. Code Ann. § 48-1-10, et. seq., the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et. seq., or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

- A. "MHA" means Midlands Housing Alliance.
- B. "Beneficiaries" means MHA's Non-Responsible Party lenders, parents, managers, members, employees, subsidiaries, assigns and successors, including new purchasers, lessees, heirs, devisees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any contamination including pollutants or contaminants, petroleum or petroleum products, or hazardous substances present on, or under, the Site as of the execution date of this Contract.
- G. "Property" means the real property as described in the Information and Certification attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of MHA. The Property occupies the eastern half of the city block bounded by Elmwood Avenue to the north, Main Street to the East, Calhoun Street to the South and Assembly Street to the west in a commercial section of Columbia.
- H. "Receptor" means an individual that is presently or potentially exposed to

contamination.

- I. "Segregated Sources" means drums, tanks, or similar discrete containers that may hold potential contamination compounds prior to release to the environment.
- J. "Waste Materials" means any contaminant-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or impacted with petroleum or other contaminants.

FINDINGS

- 2. Based on the information known by the Department, the following are asserted for this Contract:

A. Owners and Operators: The historical owners of the Property are as follows:

PARCEL TMS # R09015-02-03: Was created from 3 Parcels.

Parcel 1

The Salvation Army	Sep. 1999 to present
I & B, Inc.	1989-1999
Golden Eagle of Charleston & Greenville, and/or Palmetto Hospitality Services, Inc. (Merged into Golden Eagle in 1975)	1975-1989

Parcel 2

The Salvation Army	Nov. 1999 to present
Louise Riley	1982-1999
Elizabeth Blythe Frazer	1987-1999
Gulielma B. Blythe	1961 - 1987

Parcel 3

The Salvation Army	Nov. 1999 to present
Elizabeth Blythe Frazer	1987-1999
Karen R. Belser	1964-1999
Gulielma B. Blythe	1961 – 1987

09-5807-NRP

Midlands Housing Alliance, File #57665

Page 3 of 25

TMS R09015-02-07

Mary H. Taylor

1982 to present

TMS R09015-02-08

Elizabeth B. Thrash, James R. Bass

1989 to present

Elizabeth B. Thrash, J.R. Thrash, Harriet R. Bass, Janice R. Weed

1988 to present

Thomas B. Roach

1984 to present

Blanche R. Bass

1984 – 1989

Claudia O. Roach

1984-1988

B. Property History: Available records show the Property was first developed commercially sometime before the late 1800's. Before 1966, various businesses operated retail stores, restaurants, nightclubs, automobile dealerships with service centers, and a gas filling station on portions of the Property. In approximately 1966, a motel was built on the Property and operated until the 1990's. Since then, the Salvation Army has operated the old motel building as a homeless shelter.

C. Investigations / Reports: MHA submitted the following environmental reports in conjunction with the Information and Certification: a "Phase I Environmental Site Assessment" (S&ME, Sep. 5, 2008), a "Limited Phase II Environmental Site Assessment" (S&ME, Sep. 29, 2008), and a "Groundwater Assessment" (S&ME, Jan.14, 2009).

D. Potential Environmental Impacts: The Phase I investigation identified several RECs (Recognized Environmental Conditions) on the Property and on surrounding properties based on review of Sanborn Fire Insurance maps and historical city directories. The RECs on the Property include a gas filling station, various automobile dealerships and service garages, and a potential drycleaner operation. The filling station was at the corner of Main and Elmwood from 1943 to 1958; the automobile dealerships and service garages were spread along Main and Calhoun Streets with intermittent operations from 1921 to 1962; and the drycleaner may

have operated in the middle of the block along Main Street in 1933. Also, although not listed as a REC, a printing business operated near the corner of Main and Calhoun (i.e., southeast corner of the Property) in the early 1950s. RECs on nearby properties include former filling stations and automobile repair garages on adjacent properties and a drycleaner that operated from 1958 to 1968 on nearby property to the southeast.

- E. Phase II Buried Tank Investigation: Electromagnetic profiling and ground-penetrating radar were used during the Phase II investigation to determine if buried tanks remained from the former filling station. The profiling showed a subsurface area of disturbed earth, but no magnetic evidence of remaining tanks. Soil samples collected at depth intervals from the disturbed earth area were field-screened for organic vapors and did not indicate a release.
- F. Phase II Groundwater Investigation: Four temporary wells were installed and sampled during the September 2008 Phase II investigation. The samples received limited analysis based on their location. A well in the area of the former filling station and another well presumed downgradient of a former filling station on adjacent property were analyzed for petroleum constituents, but nothing was detected. The other two wells were analyzed for VOCs (Volatile Organic Compounds) since these were targeted towards the circa-1933 drycleaner location in the middle of the block and at the Property's southeast corner to determine if there was an impact from the former drycleaner on the nearby property. The circa-1933 drycleaner well had no detections, whereas the southeast well detected moderately elevated concentrations (61 to 145 ppb) of PCE (Tetrachloroethylene), TCE (Trichloroethylene) and 1,2-DCE (1,2 Dichloroethylene). The Phase II concluded that these compounds migrated onto the Property from the nearby former drycleaner.

- G. Groundwater Assessment: At the Department's request, MHA installed and

sampled permanent monitoring wells in December 2008 at the circa-1933 drycleaner location, the southeast corner of the Property, and on the west side of the Property. The well at the circa-1933 drycleaner detected a moderate concentration of PCE (53 ppb). The southeast corner well also had slightly higher (150-400 ppb) concentrations of PCE, TCE and DCE than had been detected in the September temporary well. Based on the apparent groundwater flow direction at the time of sampling (east-north-east), the southeast corner well does not appear to be directly downgradient of the nearby drycleaner.

- H. Party Identification: MHA is a South Carolina non-profit corporation with its principal place of business located at 1800 Main Street, Columbia SC. MHA affirms that it has the financial resources to conduct the response action pursuant to this Contract.
- I. Proposed Redevelopment: MHA will acquire ownership of one parcel of the Property (TMS# R09015-02-03) and obtain a long-term lease on the other two parcels. MHA intends to demolish most of the old motel building to redevelop it as a homeless transition center. The center will provide rehabilitation, social services, and temporary housing for homeless people. The two leased parcels will be paved, landscaped, and only used as parking areas.

BONA FIDE PROSPECTIVE PURCHASER STATUS

- 3. MHA certifies that it and its members are Non-Responsible Parties at the Site and are eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

- 4. MHA agrees to conduct the response actions specified in the sub-paragraphs below. An initial Work Plan shall be submitted by MHA, or its designee, within thirty days of the execution date of this Contract, or later date if approved by the Department's project manager, setting forth methods and schedules for the response actions. MHA

acknowledges that the response actions may find distributions of existing contamination requiring additional assessment or corrective actions on the Property that cannot be anticipated with this Contract. MHA agrees to perform the additional response actions consistent with the intended uses of the Property under the purview of this Contract; however, MHA may seek an amendment of this Contract to clarify their further responsibilities. MHA shall perform all response actions, whether of MHA's choosing or expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes and permitting requirements (e.g., stormwater management and waste disposal regulations). MHA shall identify and obtain the applicable permits before beginning any action.
- 2). The Work Plan and all associated reports shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 3). The Work Plan(s) shall provide sufficient information about the proposed sampling points, collection methods, analytical methods, and other pertinent details of the response actions.
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures .
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with the South Carolina Well Standards and Regulations-R.61-71. The Work Plan shall provide sufficient detail to support issuance of the well approvals.
 - c). The laboratory analyses shall be as required in the media-specific subparagraphs below, but may include: 1) the full EPA-TAL (Target Analyte List); 2) the full EPA-TCL (Target Compound List); or 3) VOCs (EPA-TCL Volatile Organic Compounds).

- d). All analytical methods shall use appropriate detection levels to allow comparison to media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL (Soil Screening Level) for a compound shall be the "MCL-Based SSL" if listed.
- 4). The Work Plan shall include the names, addresses, and telephone numbers of MHA's consulting firm(s), analytical laboratories, and MHA's contact person for matters relating to this Contract.
 - a). The analytical laboratory shall possess applicable Certification, as per South Carolina R.61-81, for the test methods to be used during this assessment.
 - b). MHA shall notify the Department in writing of changes in the contractor or laboratory.
- 5). The Department will notify MHA in writing of approvals or deficiencies in the Work Plan.
- 6). MHA, or its designee, shall respond in writing within thirty days to the Department's comments with regards to deficiencies.
- 7). MHA shall implement the Work Plan upon written approval from the Department.
- 8). MHA shall inform the Department at least five (5) working days in advance of all field activities, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
- 9). MHA shall preserve items that may: 1) provide evidence of a Potentially Responsible Party's involvement at the site; 2) lead to the discovery of other areas of contamination; or 3) contain environmental information. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. MHA shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Assess Waste Materials and Segregated Sources :

- 1). MHA shall assess Waste Materials and Segregated Sources upon their discovery on the Property at any time during assessment, corrective action, or development activities.
- 2). MHA's assessment shall include characterization of the contaminant concentrations, and an estimation of the quantity and extent of each type of Waste Material or Segregated Source, as applicable.
- 3). MHA shall expeditiously upon discovery stabilize or remove from the Property any Segregated Source that has not yet released all contents to the environment.

C. Assess groundwater quality:

- 1). MHA shall determine groundwater quality through analysis of a minimum of five (5) groundwater samples collected pursuant to this contract. MHA shall determine the probable groundwater flow direction at the time of sampling. The samples shall be from two temporary monitoring wells to be installed concurrent with re-testing the three existing permanent wells.
- 2). The temporary well locations shall be located in potentially upgradient and downgradient directions from permanent well MW1, and be as close to the Property boundaries as possible. The temporary well locations may be on adjacent municipal property if MHA can secure access.
- 3). Samples from all monitoring wells shall be analyzed for VOCs. In addition, permanent well MW2 shall be analyzed for the full TAL/TCL parameters.
- 4). Groundwater quality results shall be compared to standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, and to the Regional Screening Tables values for "Tapwater", if not specified in R.61-58.

D. Evaluate and control potential impacts to indoor air:

- 1). MHA shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the

subsurface. The Department will use a modified Johnson and Ettinger Model to determine “Significant Concentrations” based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting commercial exposures consistent with the building construction on the Property.

- 2). If Significant Concentrations are determined where buildings will be constructed, the evaluation shall consist of collection and analysis of soil gas samples from the new building footprint. If Significant Concentrations are determined at buildings to be retained, the evaluation shall consist of analysis of indoor air samples collected during two separate sampling events approximately six months apart. The sampling distribution shall, unless otherwise agreed to by the Department include a minimum of 1 sample (soil gas or interior air) per every 1000 square feet of building footprint potentially subject to Significant Concentrations.
- 3). Soil gas samples and/or interior air samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting concentrations at screening levels indicative of a 10^{-6} risk (using an attenuation factor appropriate for the depth of the samples). The applicable screening concentrations shall be based upon the EPA OSWER “Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils” or supplemental EPA guidance.
- 4). The Department may allow MHA to implement Vapor Intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department’s sole discretion, offer a similar degree of data usability.
- 5). MHA shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the predicted indoor air concentration exceeds a 10^{-6} risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs). The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the buildings do not result from the

subsurface conditions.

E. Institute reasonable contamination control measures:

- 1). MHA shall take reasonable measures to limit or prevent human exposure to existing contamination on the Property:
 - a). Measures shall be required for Waste Materials and contaminated media with concentrations in excess of appropriate human-health and ecological risk-based exposure standards via plausibly complete routes of exposure. The measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the contamination.
 - b). The measures shall be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
 - c). MHA shall provide appropriate documentation to demonstrate satisfactory completion of the control measures for Department review and approval prior to obtaining a Certificate of Completion.
- 2). MHA shall remove from the Property any Segregated Sources of contamination that have not yet released all contents to the environment.
 - a). The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
 - b). MHA shall document the characterization and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.

F. Monitor and/or abandon the monitoring wells:

- 1). MHA shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors. The Department will determine the frequency and duration of the monitoring program on a case-specific basis.

- 2). MHA shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

HEALTH AND SAFETY PLAN

5. MHA shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. MHA agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by MHA.

PUBLIC PARTICIPATION

6. MHA and the Department will foster public participation to implement this Contract as follows:
 - A. The Department will seek public comment and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. statutes upon signature of this Contract by MHA.
 - B. MHA shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected within one day of the Department's public announcement about the Contract in a newspaper of general circulation in the community.
 - 1). The sign will state "Voluntary Cleanup Project by Midlands Housing Alliance under Voluntary Cleanup Contract 09-5807-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of MHA. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".

- 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the Property.
- 3). MHA shall submit photographs of the sign and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). MHA agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). MHA shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, MHA shall restore the sign within two days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. MHA shall submit periodic written updates to the Department's project manager until such time as all activities are complete pursuant to this Contract. The first update shall be due within 90 days of Work Plan approval and semi-annually thereafter.
 - A. The updates may be in summary letter format, but should include information about:
 - 1). The actions taken under this Contract during the previous reporting period;
 - 2). Actions scheduled to be taken in the next reporting period;
 - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
 - 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

- B. The Department's project manager may allow an extended schedule between

updates based on site-specific conditions.

SCHEDULE

8. MHA shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances dictate a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize the contamination or prevent unacceptable exposures. MHA shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. MHA shall enter and record, and compel the owners of the leased parcels to enter and record, a Declaration of Covenants and Restrictions (Covenants) for the Property if contamination exceeds residential standards after completing the response actions pursuant to this Contract. The recorded Covenants shall be incorporated into this contract as an Appendix and shall be implemented as follows:
 - A. The Department shall prepare and sign the Covenants prior to providing them to MHA. An authorized representative of MHA and an authorized representative of the owners of each leased parcel shall sign their respective Covenant within fifteen days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
 - B. MHA or its Beneficiaries shall file the executed Covenants with the Registrar of Deeds for the county where the Property is located.
 - C. MHA or its Beneficiaries shall provide a copy of the recorded Covenants to the Department within sixty days of the Department's execution. The copy shall show the date and Book and Page numbers where the Covenants have been recorded.

- D. The Covenants shall be recorded on the master deed of any residential development planned for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Covenants.
- E. The Covenant shall reserve a right of entry and inspection for MHA or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
- 1). MHA or its Beneficiaries shall ensure that the restrictions established by the Covenants remain on any subdivided property.
 - 2). MHA or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Covenants regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- F. MHA or its Beneficiaries, or the entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Covenants to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department. There shall be no requirement for separate reports on the leased parcels as long as MHA or its beneficiaries possess a leasehold interest on the parcels.
- G. The Department may amend the Covenants in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Site change. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the applicable Screening Tables. An amendment shall be duly executed and recorded with the county using procedures similar to those detailed above.

NOTIFICATION

10. All correspondence required to be given by either party to the other shall be in writing.

Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of correspondence shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail; 2) Certified or Registered Mail; 3) Commercial delivery service company; or, 4) hand delivery to the other party.

A. All correspondence to the Department including two hardcopies of all Work Plans and reports, and one hardcopy of the Health and Safety Plan should be submitted to:

Craig Dukes
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

B. MHA's designated contact person as of the effective date of this contract shall be:

Cathy B. Novinger, Chair
Midlands Housing Alliance
602 Meeting Street, Suite B
West Columbia, SC 29169

FINANCIAL REIMBURSEMENT

11. MHA or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C.

09-5807-NRP

Midlands Housing Alliance, File #57665

Page 16 of 25

statutes. The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereof, and may include costs incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to MHA on a quarterly basis. In recognition of MHA's non-profit status, the Department may waive reimbursement of oversight costs, exclusive of the cost incurred for public participation. The Department reserves the right to re-instate oversight billing upon thirty-day notice to MHA; however, said billing shall not include any costs incurred by the Department prior to receipt of the notice. All costs are payable within thirty days of the Department's invoice submitted to:

Mickey E. Layden
1301 Gervais Street, Suite 522
P O Box 11610
Columbia SC 29211-1610

ACCESS TO THE PROPERTY

12. MHA agrees the Department has an irrevocable right of access to the Property after MHA acquires the Property or a leasehold interest on the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion will be issued on the Property as follows:

- A. MHA shall request a Certificate of Completion after the response actions are completed and any required Covenants are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed

or remediated on the Property, if any; and 2) the cost of all environmental work conducted pursuant to this Contract.

- B. The Department will issue the Certificate of Completion with its covenant not to sue upon determining that MHA has successfully and completely complied with the Contract.
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions are complete but all activities on the Property cannot be completed due to site-specific circumstances.
 - 1). A Provisional Certificate of Completion will include specific performance standards that MHA or its Beneficiaries shall continue to meet.
 - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if MHA or its Beneficiaries do not satisfactorily complete the requirements of the Contract.

ECONOMIC BENEFITS REPORTING

- 14. MHA or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two years after the execution date of this Contract, and annually until two years after redevelopment of the Property is complete. MHA shall summarize the new operations at the Property, the number of jobs created, the amount of increase to the tax base, and the total amount invested in the site for property acquisition and capital improvements.

TRANSFER OF CONTRACT

- 15. The terms and conditions of this Contract apply to and inure to the benefit of the Department, MHA, and its Beneficiaries. The following stipulations apply to ensure the transition of all responsibilities and benefits to successive Beneficiaries for any portion

of the Property:

- A. MHA or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
- B. MHA and its Beneficiaries shall not allow transfer of any portion of the Property for residential occupancy prior to obtaining the Certificate of Completion or a Provisional Certificate of Completion specific to that portion of the Property.
- C. If the Certificate of Completion has not been issued, MHA or its Beneficiaries shall seek approval from the Department prior to assigning or transferring the protections and obligations of this Contract to a new entity. The protections shall not inure to an entity without the Department's approval. The Department shall not unreasonably withhold its approval upon receipt of documentation from the new entity showing it:
 - 1). Is eligible to be a Bona Fide Prospective Purchaser for the Property;
 - 2). Has sufficient resources to complete the activities of this Contract;
 - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
 - 4). Will assume the protections and all obligations of this Contract and,
 - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.
- D. If the Certificate of Completion has been issued and the portion of the Property is subject to a Covenant or other ongoing obligation pursuant to this Contract, MHA or its Beneficiaries shall provide written notification to the Department identifying the new entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.
 - 1). The notification shall include a signed statement from the new entity that its use

of the Property will remain consistent with the terms of the Contract, and that it will assume the protections and ongoing obligations of this Contract.

- 2). This requirement is waived for an entity acquiring a portion of the Property for individual residential use provided the Covenant is recorded on the master deed for the residential development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

- E. If a Certificate of Completion has been issued and the Property is not subject to a Covenant or other continued obligation pursuant to this Contract, no notification is required.

REVERSION OF LEASED PARCELS

16. MHA, or its beneficiaries, shall notify the Department in writing within thirty days of termination of its leasehold interest in either parcel R09015-02-07 or R09015-02-08. The terms, protections and benefits of this Contract shall not inure to an entity owning either parcel before the execution date of this Contract. The Department may extend the protections of this contract, upon request, to a new entity acquiring an ownership interest in either parcel, provided 1) the entity is eligible to be a Bona Fide Prospective Purchaser for the Property, 2) the entity does not impede or contravene MHA's response actions on the Property or Covenants on the Property pursuant to this contract.

CONTRACT TERMINATION

17. MHA, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party. Termination shall be subject to the following:

- A. The Department may terminate this Contract only for cause and shall provide opportunity for MHA or its Beneficiaries to correct causes of termination, which may

include, but is not limited to, the following:

- 1). Failure to complete the terms of this Contract;
- 2). Change in MHA's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
- 4). Failure of MHA or its Beneficiaries to implement appropriate response actions for additional contamination or releases caused by MHA or its Beneficiaries, or
- 5). Providing the Department with false or incomplete information or knowing failure to disclose material information;
- 6). Failure by MHA or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this contract; or,
- 7). Failure by MHA or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of MHA's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.

B. Should MHA or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards created by MHA or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment that did not exist before the response actions identified in this Contract.

C. Termination of this Contract by any party does not end the obligations of MHA or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract prior to the effective date of the termination. Payment for such costs shall become immediately due.

- D. The protections provided to MHA or its Beneficiaries shall be null and void as to any party who willfully or intentionally participated in actions giving rise to termination of the Contract. This shall apply to that party's lenders, parents, subsidiaries, members, managers, employees, assigns, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party. The protections will continue for any other covered party who did not willfully or intentionally participate in the action giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

18. MHA and its Beneficiaries are entitled to the protections and benefits provided by S.C. statutes as follows:

A. Effective on the date this Contract is first executed by the Department:

- 1). Protection from CERCLA contribution claims.
- 2). Protection from third-party claims for equitable relief or damages relating to "Existing Contamination" at the Site.
- 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.

B. Effective on the date the Certificate of Completion is issued by the Department:

- 1). The Department's covenant not to sue MHA and its Beneficiaries for Existing Contamination except for releases and consequences caused by MHA or its Beneficiaries.
- 2). Specific tax credits or additional benefits expressly contingent in S.C. statutes on issuance of the Certificate of Completion.

C. These Protections and Benefits do not apply to any contamination, releases, and consequences caused by MHA and its Beneficiaries. The Department retains all rights under State and Federal laws to compel MHA and its Beneficiaries to perform or pay for response activity for contamination, releases and consequences created

by MHA or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

19. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than MHA and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than MHA and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY MHA

20. MHA retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. MHA and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for contamination, releases, and consequences they cause or contribute to the Site. However, MHA and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

21. MHA and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered contamination is not attributable to MHA or its Beneficiaries. MHA and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered contamination. For purposes of this clause, newly discovered contamination means finding types of contamination not previously identified at the Site or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY MHA AND ITS BENEFICIARIES

22. In consideration of the protections from the Department, MHA and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions, or the Department's willful violation of the terms of this agreement.

SIGNATORIES

23. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY: _____
Daphne G. Neel, Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Office of General Counsel

DATE: _____

MIDLANDS HOUSING ALLIANCE

BY: _____

DATE: _____

Printed Name and Title